

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 679 of 1998****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA****HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RAMJIBHAI TALSIBHAI PATEL - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

MR ZUBIN F BHARDA for Appellant(s) : 1,
Mr.R.C.Kodekar, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**and****HONOURABLE MR.JUSTICE MD SHAH****Date : 23/2/2007 and 26/02/2007****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)**

23.2.2007 :

1. The present appellant - original accused has been convicted by the Additional Sessions Judge, Morbi in Sessions Case No.42 of 1996 by judgment and order dated 30.4.1998 for the offence punishable under Section 302 and awarded sentence to undergo life imprisonment and also imposed fine of Rs.5,000/- and in default one month's rigorous imprisonment. Being aggrieved and dissatisfied with the above referred judgment, the present appellant has preferred this appeal.

2. The short facts of the prosecution case are as under :

2.1 That the present appellant resides with his wife and children at Tankara, Taluka Morbi, District Rajkot in Ghetiavas. On the day of incident, i.e., on 28.4.1996 the appellant and his wife victim Kantaben were alone in the house and their daughter Maya had gone to service at Ajanta Watch Company, Morbi and their sons had gone to their maternal uncle's place at village Rojia Taluka Dhrol-Jodia, District Jamnagar. At that time, at about 17.00 hours appellant demanded money from his wife for the purpose of gambling to which the wife denied. This resulted into quarrel between them and the appellant - accused has taken 'kodali' in his hand and gave kodali blows using it's reverse side on his wife Kantaben. Complainant Veljibhai Thakarsibhai came to

know of the same and, therefore, he went to inform the Tankara Police Station. There he met Chakubhai Tulsibhai of Primary School, Tankara, who is also staying in the same locality and the complainant has informed regarding the incident to Chakubhai Tulsibhai and requested him to give company and, therefore, both went to the Tankara Police Station wherein complainant Vejjibhai went inside the Police Station and lodged the complaint. The police registered the complaint against the present appellant under Section 302 IPC vide Tankara Police Station No. I CR 57 of 1996. Chakubhai waited outside with an instruction that if his presence is required then, the complainant may call him also. But as Chakubhai Tulsibhai has not been called for some time, he came back home where his wife has also informed him regarding the incident and requested him to go inside the house of victim and, therefore, he went to the house of the victim and at that time accused came out from the house and made an extra-judicial confession regarding the incident wherein he has categorically stated that he has killed his wife Kantaben and, thereafter, appellant accused himself has voluntarily gone to the police station and surrendered himself before the police and he has been arrested by police at 23.30 hours under an arrest panchanama prepared in the police station in presence of panchas. The clothes worn by the accused at that time and other articles were also seized under a seizure panchanama. Thereafter, police went to the scene of offence, prepared the panchanama of scene of

offence, drew inquest panchanama, also made arrangement for sending the body of the deceased for post-mortem, seized the muddammal and also recorded the statement of various witnesses. Thereafter, as the appellant-accused has shown willingness to produce the muddammal weapon which he has used, a discovery panchanama to that effect was prepared in the presence of panchas and, therefore, the panchas, police and present appellant - accused first went towards the place where the muddammal weapon has been concealed by him and in that process, the appellant - accused took them into his house and he has taken out the kodali which he has hidden in heap of grass and panchanama to that effect has been prepared. The police sent the muddammal to FSL with forwarding letter and on arrival of FSL report, it has been kept in investigation file. Along with that, on receiving the postmortem note and death certificate, the same has also been kept and at the end of investigation, the investigating officer has submitted the charge sheet in the Court of learned Judicial Magistrate (FC), Morbi on 10.7.1996. As the offence registered against the present appellant under Section 302 of the Indian Penal Code was exclusively triable by the Sessions Court, the learned J.M.F.C., Morbi has committed the same to the Sessions Court, Morbi on 26.7.1996 under Section 209 of the Criminal Procedure Code where it was numbered as Sessions Case No.42 of 1996 and the same has been sent in the Court of learned Additional Sessions Judge, Morbi for disposing the same on merits. On appearance of the

appellant - accused in the Court, learned Additional Sessions Judge framed the charge against him wherein he has pleaded not guilty and prayed for trial.

2.2. To prove the guilt against the appellant accused, the prosecution examined the following witnesses as oral witnesses: 1) P.W.1 Dr.Maganlal Vashrambhai Vithlani Exh.6-, who has performed the post-mortem of the deceased Kantaben, (2) P.W.2 Veljibhai Thakarsibhai- complainant Exh.11, (3) P.W.3 Chakubhai Tulsibhai, Principal, Primary School, Tankara Exh.12 person before whom the extra-judicial confession has been made by the appellant accused and at the time he was not even in police custody or under police surveillance, (4) P.W.4 Bhikhalal Shamjibhai, brother of deceased Kantaben Exh.13, (5) P.W.5 Bharatbhai Ramjibhai, Exh.14 son of appellant - accused and deceased Kantaben, (6) P.W.6 Kurjibhai Mohanbhai, Exh.22 uncle of deceased, (7) P.W.7 Dayaljibhai Lavjibhai, Exh.23, (8) P.W.8 Mavjibhai Veljibhai, panch of scene of offence, Exh.24 (9) P.W.9 Prabhudas Narshidas, who is panch of discovery panchanama of weapon which has been voluntarily found out and produced by the accused in presence of panch, Exh.30. (10) PW 10 Pravinaben Vallabhbhai Patel, Exh.33 panch of inquest panchanama, (11) PW 11 Jivabhai Bhalabhai Exh.34 panch of recovery panchanama, (12) PW 12 Maganbhai Tribhovanbhai Patel, Exh.35, panch of arrest panchanama of accused, (13) PW 13 Hariben Khimjibhai, witness, Exh.44, (14) PW 14 Pitambar Manjibhai, witness, Exh.46, (15) PW 15 Hemlataben Devsibhai, witness, Exh.45, (16) PW 16

P.S.I.Balvantsinh Nirubha Sarvaiya, Investigating Officer, Exh.47, (17) PW 17 First Investigating Officer P.S.I. Sunilkumar Tolabhai Damor, Exh.48 and (18) PW 18 H.C.Khengarbhai Khimjibhai Exh.62. The prosecution has also produced and relied upon the documentary evidence i.e., the P.M.note Exh.7 dated 29.4.1996, Yadi sent by Police Officer to the concerned doctor for performing the post-mortem Exh.8 along with copy of inquest panchanama and Marnottar form Exhs.9 & 10, panchanama of scene of offence Exh.25 along with panch slip of muddammal packet Exhs.26,27,28,29,32,37 to 40, discovery panchanama of weapon Exh.31, arrest panchanama of accused Exh.36, the cloth which was seized from the body of the deceased Exh.52, forwarding letter written by I.O., to F.S.L Exh.54, receipt received by F.S.L.Exh.53, F.S.L.report Exh.57, serological report Exh.59, complaint Exh.60, station dairy entry exh.63 and notification issued by the District Magistrate Rajkot under Bombay Police Act under Section 37 Exh.55.

3. We have heard learned counsel for the appellant, Mr.Zubin Bharda and Mr.Kodekar, learned A.P.P., for the State.

4. The learned counsel for the appellant has mainly concentrated his arguments on the point of confessional statement and argued that in the eye of law, it is not a confessional statement. Over and above, the witnesses examined by the prosecution are got up ones and, therefore, their evidence is not

trustworthy. Except that, there is no evidence on record to connect the accused with the crime in question. He also took us through the relevant oral as well as documentary evidence and reasoned judgment and argued that except P.W.3 - Chakubhai Exh.12 against whom the accused alleged to have made extra judicial confession and son of the deceased and appellant P.W.5 Bharatbhai Exh.14, no other witnesses have supported the say of the prosecution at all. According to him, even panchas have also not supported the same and except the above two witnesses, there is no other evidence on record and, therefore, it is a case which is based on circumstantial evidence wherein the appellant - accused is required to be acquitted. He has also argued that as far as the panchas of arrest panchanama, discovery panchanama and seizure of clothes of deceased are concerned, they have not supported the say of the prosecution and prosecution has proved the same only on the basis of evidence of Investigating Officer Exh.48 and, therefore, according to him, this is also a weak evidence and on that basis the accused cannot be convicted and ought to have been acquitted. Lastly, it has been argued by him that incident has taken place in broad day light in the house and no neighbour has supported the same and in absence of any independent evidence also, the appeal is liable to be allowed.

5. Learned A.P.P., Mr.R.C.Kodekar has mainly concentrated that there is ample evidence on record

to connect the accused with the crime in question. In this regard, he took us through the evidence of P.W.3 Chakubhai Exh.12, Principal of Primary School, and argued that he is an independent and respectable person in Tankara town and his evidence cannot be discarded because at the earliest he has disclosed the same before the police. Not only that, when the accused has made an extra judicial confession before him, accused was not arrested nor was he under police surveillance and, therefore, legally his extra judicial confession is binding to the accused. According to him, second important evidence is P.W.5 Bharatbhai Ramjibhai, Exh.14, who is the son of the appellant as well as the deceased and he is the person who knows that his mother has been brutally killed by his father and now except his father there are no other relatives on earth and then also he has stuck to his statement before the police and nothing has come out in cross-examination. Therefore, Mr.Kodekar requested that his evidence is required to be believed. Mr.Kodekar has also taken us through the deposition of Investigating Officer at Exh.48 through whom the prosecution has proved all documentary evidences, mainly discovery panchanama, panchanama of scene of offence, panchanama of seizure of weapon, panchanama of clothes seized from the body of the accused at the time of his arrest. He also took us through the F.S.L.report and argued that weapon Kodali and the clothes which were seized from the body of the deceased were having the blood stains and as per the FSL report, the blood stains were

found to be of human being and the blood group was 'A' and even the blood group of deceased is also 'A' and, therefore, according to him, this is the strongest circumstance which connects the accused with the crime in question. He also drawn our attention towards the time of incident i.e. 17.00 hours and the complaint filed by the complainant at the earliest and also the fact that the accused has voluntarily surrendered before the police and produced the muddamal weapon and clothes at 23.00 hours. According to him, all the circumstances along with the extra judicial confession lead to only one conclusion that appellant - accused has killed his wife as she refused to give money for the purpose of gambling and, therefore, according to him no interference is required in the impugned judgment.

26.2.2007

6. We have also given our thoughtful consideration to the evidence, arguments of learned advocates for the parties and also gone through the evidences which have been produced by learned counsel for the respective parties.

7. It is required to be noted that in this case, the following aspects are not in dispute. That the appellant and deceased are husband and wife and that the incident has taken place in Tankara Ghetiavas near the house of the appellant and deceased. At the time of the incident, their daughter

Maya went to service at Ajanta Watch Company at Morbi and their sons were at their maternal house and both were alone in the house. It is also established from the evidence that the complainant is the nearest relative of the appellant.

8. It is established from the evidence of Chakurbhai Tulsibhai P.W.3 and even from the evidence of P.W.2 complainant that P.W.2 complainant went to Tankara to inform the police where he met P.W.Chakurbhai Exh.12 and he has informed regarding the incident and requested to give company to go to Tankara Police Station. P.W.2 Exh.11 has not supported the say of the prosecution and has been declared as hostile and permission has been granted to the learned A.P.P., to cross-examine him. It is required to be noted that prior to declaring this witness as hostile, certain important facts have been established from his evidence which shows that the incident has taken place. He has deposed before the Court that he went to the Police Station for the purpose of informing that quarrel has taken place wherein Kantaben has been killed. Not only that, he has also admitted that complaint has been written by the police in his presence and, thereafter, thumb mark has been obtained by the police upon the FIR but, thereafter, he has tried to escape and help the accused. Obviously, he being the nearest relative of the appellant must have been won over by the appellant - accused and tried to help the appellant. However, there are other star witness i.e.P.W.3,

Exh.12, who is the Principal of Primary School of Tankara staying in the same locality and who has fully supported the say of the prosecution. He has deposed that his statement has been recorded by the police at the earliest. It is also required to be noted that accused has made extra judicial statement before him and at that time he was not under police surveillance or police custody. Therefore, his extra judicial confession is legal one and it has got some more importance. Not only that, there are scientific evidences on record supporting the say of the prosecution. It is to be noted that the accused himself went to the police station on the same day at 23.30 hours when he has been arrested. The clothes worn by him seized in the presence of panchas were having blood stains and thereafter, during the course of investigation, as he has voluntarily shown willingness to produce the weapon which he has used and hidden, after following proper procedure i.e. Preparing preliminary panchanama at police station etc., and as per direction given by him, panchas and police went to the place which was house of the appellant where he has found out the weapon Kodali hidden in the heap of grass and therefore the same has been seized after preparing proper panchanama. The said weapon has also been found with the blood stains. The clothes worn by deceased at the time of incident was also produced and seized under a panchanama and it was also found with blood stains. All the above referred muddammals have been sent by the investigating authority to FSL with forwarding

letter and on receiving the same, ultimately, written report has been submitted by the expert of FSL at Exh.58 and serological report Exh.59 wherein it has been mentioned that the clothes which have been seized from the body of the accused at the time of arrest panchanama, clothes of deceased, weapon which has been produced by the accused Exh.27 panchanama were having the human blood stains of 'A' group. It is also mentioned in the above referred report that blood group of the deceased was 'A' group. In view of the above evidence also, it is clear that the accused is the author of the crime. Not only that, even the oral evidence of son of deceased and the accused i.e. P.W.5 Bharatbhai Ramjibhai, Exh.14, has also deposed regarding the previous conduct of his father wherein it has been established that his habits were not good. He was fond of gambling and other vices and for which he used to quarrel with his wife and demand money and obviously having six children and responsibility of eight family members, one could not afford to give money which otherwise is required to be used for daily requirement of his family members which resulted into murder.

9. We have also given our thoughtful consideration regarding the fact which has established that quarrel has taken place on demanding money and whether it falls under sudden provocation or not is required to be seen. P.M.note Ex.53 shows that deceased was having ten injuries of deadly weapon of kodali and most of the injuries are on

vital parts of the body and therefore, it cannot be said that incident has happened in a spur of moment but altercation was there. We are of the opinion that it is a case wherein the appellant has killed his wife brutally.

10. Arrest panchanama of the accused Exh.36 indicates that the accused presented himself before the police couple of hours after committing the crime. It reveals from this panchanama that on the shirt worn by the accused at the time of incident, after leaving 2 buttons, third and fourth buttons were missing and there were also marks of pulling of shirt. The said clothes were recovered from the accused in presence of panchas by drawing panchanama Exh.36. Exh.25 is the panchanama of scene of offence. From the place of offence in presence of panchas, the police has collected some pieces of broken plastic bangles, red coloured and cream coloured buttons. As far as red coloured buttons are concerned, they were of the blouse worn by deceased at the time of incident and it was proved through the FSL report which is produced at exh.54. The report of FSL produced at exh.54 clearly shows that buttons which were collected from the place of offence were of shirt which was recovered from the accused. It is also pertinent to note that blood stains found on these buttons were also blood group 'A' which was of deceased. From this evidence also, all probabilities lead to only one conclusion that the accused has committed crime and none other. Thus, the

prosecution has proved the charges of Section 302 of Indian Penal Code beyond reasonable doubt, and therefore the appeal which lacks merits is liable to be dismissed.

11. In the result, the appeal fails and is hereby dismissed.

(R.P.Dholakia, J) (M.D.Shah, J)

srilatha